

CONSERVATION EASEMENT DEED

JOHN A. ADAMS, Trustee of the John A. Adams Revocable Trust -1999, of 86 Winnicutt Road, Town of Stratham, County of Rockingham, State of New Hampshire, (hereinafter referred to as the "Grantor", which word shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), for consideration paid, with WARRANTY covenants, grants in perpetuity to the **TOWN OF STRATHAM**, a municipal corporation, situated in the County of Rockingham, State of New Hampshire, acting through its Conservation Commission pursuant to NH RSA 36-A:4, with a mailing address of 10 Bunkerhill Avenue, Stratham, New Hampshire 03885, (the "Town"), collectively hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Protected Property") with any and all buildings, structures, and improvements thereon/being unimproved land, consisting of 11.416 acres, situated on Winnicutt Road in the Town of Stratham, County of Rockingham, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

A. As a first priority, to protect 11.416 acres of productive pasture, farmland and forestland from future development; and

B. Next, to conserve soil productivity for the long-term protection of the Protected Property's capacity to produce economically valuable agriculture and forestry products, which are impacted by more than three hundred (300) feet of undeveloped road frontage; and

C. To protect wetlands, surface waters, and groundwater from the impacts of development; and

D. To preserve, protect and conserve open spaces, and the wildlife habitat thereon and to protect biological diversity, native flora and fauna, and the environments, habitats, and ecological processes that support them, as those values exist on the date of this instrument, and as they may evolve in the future; and

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REGISTRY OF DEEDS

E. To preserve scenic enjoyment for the general public through the protection from development of more than two hundred (200) feet of undeveloped road frontage, pasture lands and forest.

F. The preservation of the land subject to the Easement granted hereby for outdoor recreation by and/or the education of the general public; and

G. Overall, to assure the Protected Property will be retained forever in its undeveloped, scenic, and open space condition and to prevent any use or fragmentation of the Protected Property that will significantly impair or interfere with its unique and significant qualities of public benefit and conservation values.

The above purposes are consistent with clearly delineated open space conservation goals and/or objectives, i.e., the following statements in Chapter 7 (Resource Conservation and Preservation) of the August, 1998 Master Plan of the Town of Stratham ("the Master Plan"): "Although Stratham's natural features still exist in abundance, past development has inevitably resulted in the loss of some resources, especially open spaces and active agricultural land. Careful attention must be given to future development so that further development so that further losses to both the natural and cultural environment are minimized and that the essential qualities that make Stratham the community it is remain intact;" and the clearly delineated open space conservation goals and/or objectives as stated in Chapter 8 (Existing and Future Land Use) of the Master Plan, which states that "[t]he protection of open space in Stratham is necessary and desirable for a variety of reasons..."; together with the published policies of the Rockingham Regional Planning District and with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

All of these purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Protected Property is as follows:

2. **USE LIMITATIONS** (Subject to the reserved rights specified in Section 3 below)

A. The Protected Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the productive capacity of the Protected Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.

- (i) For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking,

cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Protected Property; and the processing and sale of products produced on the Protected Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the purposes of this Easement.

- (ii) Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Protected Property. Agricultural management activities shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the purposes of this Easement, as described in Section 1 above, nor materially impair the scenic quality of the Protected Property as viewed from public roads.
- (iii) Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the purposes of this Easement as described in Section 1 above.
 - (a) The goals are:
 - maintenance of soil productivity;
 - protection of water quality, wetlands, and riparian zones;
 - maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of unique or fragile natural areas;
 - protection of unique historic and cultural features; and
 - conservation of native plant and animal species.
 - (b) Such forestry shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
 - (c) At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the plan itself to Grantee within ten (10) days of such request, but acknowledges that the

plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.

- (d) The plan shall include a statement of landowner objectives, and shall specifically address:
 - the long-term protection of those values for which this easement is granted, as described in Section 1 above;
 - the goals in Section 2.A.iii.a above; and
 - [insert specific parameters that should be addressed during forest management, such as special water quality considerations, special plant and wildlife concerns, scenic and recreational considerations, etc. as appropriate to the particular parcel]
- (e) Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- (f) Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 1996), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.
- (g) In areas used by, or visible to, the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

B. The Protected Property shall not be subdivided.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, tower or mobile home, shall be constructed, placed, or introduced onto the Protected Property. However, ancillary structures and improvements including, but not limited to, a road, dam, fence, bridge, culvert, barn, maple sugar house, or shed may be constructed, placed, or introduced onto the Protected Property only as necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Protected

Property and provided that they are not detrimental to the purposes of this Easement. Existing structures shown on the Conservation Easement Plan dated March 31, 2004 may be maintained and improved by the Grantor. Such structures may not be enlarged or otherwise increased in size without the prior consent of the Grantee.

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- (i) are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Protected Property; and
- (ii) do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and
- (iii) are not detrimental to the purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Protected Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Protected Property, and provided such signs are not detrimental to the purposes of this Easement.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Protected Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Protected Property.

G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous; provided, however, the storage and spreading of compost, manure and other fertilizer under sound agricultural practices, the storage of feed, and the temporary storage of trash in sound receptacles for periodic off-site disposal, are permitted.

H. No rights-of-way, easement of ingress and egress, driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written approval of Grantee, except those of record and those specifically permitted under this Grant.

I. No use shall be made of the Protected Property and no activity thereon shall be permitted which, in the reasonable opinion of Grantee, is or may possess the potential to become inconsistent with the Purposes of this Easement.

J. ^{just PMO} In the event the 11.416 acres of pasture, farmland and agricultural land lies fallow for more than ~~three~~ (3) successive year(s), the Grantor shall cooperate with the Grantee to ensure that the land remain in an open condition (for purposes of this paragraph, meaning without trees and brush). Cooperation shall include, but be limited to allowing Grantee to arrange to have the open field(s) cleared, grazed, or mowed.

K. There shall be no removal or disturbance of important historic, cultural or scenic elements found on the Protected Property. Said elements could include (but are not limited to) stonewalls, archeological sites or trees lining a public street (except as such trees are included in the forest management plan).

3. RESERVED RIGHTS

Grantor reserves the right to maintain fenced pasture areas for horses, to conduct horse riding exhibitions through the existing structures and facilities shown on the Conservation Easement Plan, which are located on the 11.416 acres of pasture, farmland and agricultural land and to maintain the horse jumps occasionally used on the pasture land.

4. AFFIRMATIVE OBLIGATION FOR PUBLIC ACCESS

A. There is hereby conveyed, and Grantor shall permit public pedestrian access to and across the Protected Property for hunting, fishing, bird watching, hiking, cross country skiing, snow-shoeing, and similar transitory passive recreational purposes, but excluding camping. Grantee may mark public trails with signs, or if Grantor gives written permission, by other form of marking such as tags, blazing or painting.

B. Grantor reserves the right to post against vehicles, motorized or otherwise, and against hunting on active livestock fields or in close proximity to dwellings, against access to agricultural cropland during the growing season, and against access to forestland during harvesting or establishment of plantations.

5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Protected Property [or any division of ownership thereof permitted hereby] to any successor in interest, along with the name(s) and address(es) of such successor(s) in interest.

B. In any deed conveying an interest in all or part of the Protected Property, Grantor shall make reference to this Conservation Easement Deed and shall indicate that the provisions of this Conservation Easement Deed are binding upon all successors in interest in the Protected Property in perpetuity; provided, however, the provisions of this Conservation Easement Deed

shall be binding on all successors in interest to the Protected Property notwithstanding the failure of any deed to the Protected Property to reference this Conservation Easement Deed.

C. The Grantee shall be under no obligation to maintain the Protected Property or pay any taxes or assessments thereon.

6. BENEFITS, BURDENS, AND ACCESS

A. The burden of the Easement conveyed hereby shall run with the Protected Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have reasonable access to the Protected Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

7. BREACH OF EASEMENT

A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Town, such party shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.

C. If the Grantor fails to take such proper action under the preceding section, the Town shall, as appropriate to the purposes of this deed, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including the Grantee's expenses, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth

movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

E. The Town and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

8. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

9. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

10. CONDEMNATION/EXTINGUISHMENT

A. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder in lieu of condemnation) shall be divided between the Grantor and the Grantee in proportion to the fair market value of their respective interests in the Protected Property on the date of execution of this Easement. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the Grantee's interest shall be the amount by which the fair market value of the Protected Property immediately prior to the execution of this Easement is reduced by the use limitations imposed hereby. The value of the Grantee's interest shall be determined by an appraisal prepared [for federal income tax purposes] by a qualified appraiser within two years of the date of this Easement, and submitted to the Grantee.

C. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

11. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 4.A., above, accepts and records the additional easement.

12. ARBITRATION OF DISPUTES

A. Any dispute arising under this Easement shall be submitted to arbitration in accordance with New Hampshire RSA 542.

B. The Grantor and the Grantee shall each choose an arbitrator within 30 days of written notice from either party. The arbitrators so chosen shall in turn choose a third arbitrator within 30 days of the selection of the second arbitrator.

C. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable which they may postpone only for good cause shown.

D. A decision by two of the three arbitrators, made as soon as practicable after submission of the dispute, shall be binding upon the parties and shall be enforceable as part of this Easement.

13. USE OF PROTECTED PROPERTY IN LAND USE MATTERS

The Grantor agrees that for the purpose of determining compliance with any present or future regulation (other than those governing N.H. Current Use Assessment under RSA 79-A), bylaw, order, or ordinance (within this section referred to as "legal requirements") of the Town, the State of New Hampshire or any other governmental unit, the Protected Property shall not be taken into account in determining whether any land of the Grantor, other than the Protected Property, complies with any said legal requirements. The Protected Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to such land.

14. MERGER

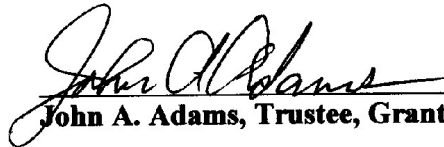
The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Protected Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein

granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.


IN WITNESS WHEREOF, the undersigned have executed or caused to be executed this 26th day of August, 2003.

John A. Adams Revocable Trust-1999


John A. Adams, Trustee, Grantor

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed was acknowledged before me this 26th day of August, 2003 by John A. Adams, in his capacity as trustee of the John A. Adams Revocable Trust-1999, as his voluntary act and deed.

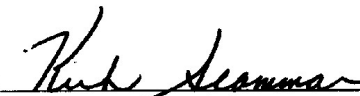

Type or Print Name: LYNN D. MORSE
Justice of the Peace/Notary Public
My Commission Expires: 2-6-2007

ACCEPTED: 8/23/04

TOWN OF STRATHAM, NEW HAMPSHIRE
BOARD OF SELECTMEN

By: 
David Short, Selectman

By: 
Martin Wool, Selectman

By: 
Kirk Scamman, Selectman

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed was acknowledged before me this 23rd day of August, 2008 by David Short, Martin Wool, and Kirk Scamman, duly authorized Selectmen of the Town of Stratham Board of Selectmen, on behalf of the Town of Stratham.

Norma J. Corrow
Type or Print Name: Norma J. Corrow
Justice of the Peace/Notary Public
My Commission Expires: _____

NORMA J. CORROW
NOTARY PUBLIC
STATE OF NEW HAMPSHIRE
My commission expires Apr. 17, 2007

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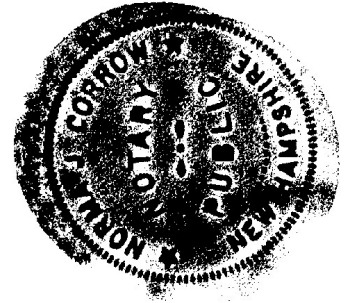


EXHIBIT A

A certain tract or parcel of land, with the buildings thereon, containing 11.416 acres situated on the southerly side of Winnacutt Road in Stratham, County of Rockingham, State of New Hampshire, and being shown and described as conservation easement on plan of land entitled "CONSERVATION EASEMENT PLAN over land of JOHN A. ADAMS, TRUSTEE 86 WINNACUTT ROAD STRATHAM NEW HAMPSHIRE for TOWN OF STRATHAM, N.H.", prepared by James Verra and Associates, Inc., dated March 31, 2004, which plan is recorded in the Rockingham County Registry of Deeds as Plan # D- 31895, and being more particularly bounded and described as follows:

Beginning at a drill hole found in a stone wall on the southerly side of said Winnacutt Road at the northwesterly corner of the within described premises at land of Helen E. Gallant; thence South 62° 11' 33" East by said stone wall and Winnacutt Road 155.05 feet to a drill hole set in the stone wall; thence South 58° 28' 22" continuing in part by said stone wall and by Winnacutt Road 53.64 feet to a drill hole set in the end of a stone wall; thence turning and running South 42° 18' 33" West by the non-easement area shown on said plan 268.28 feet to an iron rod; thence turning and running South 57° 25' 36" East continuing by the non-easement area 327.33 feet to a drill hole set in a stone wall at land of William E. Treat, Trustee; thence turning and running for four courses by land of said Treat and a stone wall as follows:

South 34° 17' 32" West, 294.38 feet to a drill hole; South 34° 18' 02" West, 310.35 feet to a drill hole; South 35° 19' 23" West, 91.79 feet to a point; and South 33° 50' 47" West in part by the stone wall 145.08 feet to an iron pipe found in an intersection of two stone walls at land of Paul Gallant; thence turning and running for three courses by land of said Gallant and in part by a stone wall as follows:

North 55° 00' 46" West 173.00 feet to a drill hole; North 55° 29' 21" West, 155.34 feet to a drill hole; North 56° 12' 36" West, 168.91 feet to an iron pipe found at land of Helen E. Gallant; thence turning and running North 33° 31' 26" East by land of said Gallant 468.42 feet to a 36" hickory tree; thence North 33° 01' 26" East still by land of said Gallant 599.31 feet to the drill hole found at the point of beginning. The total conservation easement area contains 11.416 acres.

Meaning and intending to describe a portion of the premises conveyed to John A. Adams, Trustee of the John A. Adams Revocable Trust – 1999 by deed of John A. Adams and Edith L. Adams, dated March 9, 1999 and recorded in the Rockingham County Registry of Deeds at Book 3372, Page 2382.

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